

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOSEPH CANDELARIO,

Plaintiff,

-against-

**DECLARATION OF JOSEPH  
A. MARUTOLLO IN  
SUPPORT OF CITY  
DEFENDANTS' MOTION TO  
DISMISS THE COMPLAINT**

12-CV-1206 (BSJ)

CITY OF NEW YORK, NEW YORK CITY POLICE  
DEPARTMENT, Detective Enrique Sanchez, Individually  
and in his official capacity, Detective Brian Checo,  
Individually and in his official capacity, Detective Thomas  
Taughran, Individually and in his official capacity, Officer  
Gomez, Individually and in his official capacity, Sargent  
(sic) Rojas, Individually and in his official capacity, Officer  
Juan Moren, Individually and in his official capacity,  
Officer Elhadad, Individually and in his official capacity,  
CITY OF YONKERS, YONKERS POLICE  
DEPARTMENT, Sargent (sic) Bryant Pappas, Individually  
and in his official capacity, Officer Richard Devito  
Individually and in his official capacity, Officer Salierno,  
Individually and in his official capacity,

Defendants.

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**Joseph A. Marutollo**, an attorney duly admitted to practice in the Southern District of  
New York, declares pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the following is  
true and correct:

1. I am an Assistant Corporation Counsel in the Office of Michael A. Cardozo,  
Corporation Counsel of the City of New York, attorney for defendants City of New York and  
New York City Police Department ("City defendants") in the above captioned case.

2. This declaration is submitted in support of City defendants' motion to dismiss the complaint, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. I am familiar with the facts and circumstances stated herein based upon personal knowledge, the books and records of the City of New York, and conversations with its agents and employees. I submit this declaration to place the relevant documents in the records.

3. A copy of the complaint, filed February 16, 2012, is annexed hereto as Exhibit "A."

4. A copy of the felony complaint filed in the Criminal Court of the City of New York,<sup>1</sup> dated February 20, 2010, is annexed hereto as Exhibit "B."

5. A copy of the arrest report, dated February 20, 2010, is annexed hereto as Exhibit "C."

6. A copy of the Yonkers Police Department Supplementary Report, dated February 20, 2010, is annexed hereto as Exhibit "D."

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<sup>1</sup> City defendants intend to use documents in the public record, including plaintiffs' indictments, to further support their motion. See e.g., Blue Tree Hotels Inv. (Can.), Ltd., 369 F.3d 212, 217 (2d Cir. 2004)(stating that courts "may also look to public records, including complaints filed in state court, in deciding a motion to dismiss"); Awelewa v. NY. City., 11 Civ. 778 (NRB), 2012 U.S. Dist. LEXIS 24244, \*9-10 (S.D.N.Y. Feb. 22, 2012)(finding that in a Fed. R. Civ. P. 12(b)(6) motion to dismiss, "[w]hile [the Court] may of course not use public records to establish the truth of a third-party assertion documented therein (i.e. that plaintiff actually attempted to leave the store with merchandise for which she had not paid), the Court may rely on such records to show here that store personnel made the recorded allegations, whether true or not, to Officer Doe."); Guerrier v. Quillian, No. 10 Civ. 9453 (CM), 2011 U.S. Dist. LEXIS 120189 (S.D.N.Y. Oct. 24, 2011); Wims v. New York City Police Dep't, No. 10 Civ. 6128 (PKC), 2011 U.S. Dist. LEXIS 78641, 2011 WL 2946369, at \*2 (S.D.N.Y. July 20, 2011)(finding that judicial notice may be taken of public records, including "arrest reports, criminal complaints, indictments, and criminal disposition data"); Vasquez v. City of New York, 99 Civ. 4606 (DC), 2000 U.S. Dist. LEXIS 8887, at \*3, n.1 (S.D.N.Y. June 28, 2000)(Chin, J.)(holding that it is well established that a district court may rely on matters of public record in deciding a motion to dismiss," including criminal complaints, indictments, and criminal disposition data)(citations omitted).



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and in his official capacity, Detective Thomas Taughran,  
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Individually and in his official capacity, Sargent (*sic*) Rojas,  
Individually and in his official capacity, Officer Juan Moren,  
Individually and in his official capacity, Officer Elhadad,  
Individually and in his official capacity, CITY OF  
YONKERS, YONKERS POLICE DEPARTMENT, Sargent  
(*sic*) Bryant Pappas, Individually and in his official capacity,  
Officer Richard Devito Individually and in his official  
capacity, Officer Salierno, Individually and in his official  
capacity,

Defendants

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**DECLARATION OF JOSEPH A. MARUTOLLO**

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**MICHAEL A. CARDOZO**

*Corporation Counsel of the City of New York*

*100 Church Street, Room 3-168*

*New York, New York 10007*

*Of Counsel: Joseph A. Marutollo*

*Tel: (212) 788-1300*

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*Due and timely service is hereby admitted.*

*New York, N.Y.*....., 2012

..... *Esq.*

*Attorney for*.....